

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PEGUERO,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,
INC., THE SKLOVER GROUP, INC., and
FEDERAL INSURANCE COMPANY,

Defendants.

Civil Action No.

RECEIPT # 64223
AMOUNT \$ 250.00
SUMMONS ISSUED
LOCAL RULE 4:1 D. C. 3
WAIVER FORM
MCF ISSUED
BY DPTY. CLK.
DATE 5-13-05

05 - 10995 RCL

Referred to MJ RB Collins

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendants American Express Company, Inc. ("American Express"), The Sklover Group, Inc. ("Sklover"), and Federal Insurance Company ("Federal"), by their undersigned attorneys, submit this Notice of Removal and respectfully state as follows:

NATURE OF THE ACTION

1. On or about March 23, 2005, plaintiff Altagracia Peguero filed a Complaint (the "Complaint") in the Commonwealth of Massachusetts, Suffolk Superior Court, entitled *Peguero v. American Express, et al.*, Civil Action No. 05-1190D (the "State Court Action") against American Express, Sklover and Federal, purporting to allege claims for fraud, deceit, breach of contract, promissory estoppel and violations of Massachusetts General Laws c.175, §110E, and c. 93A, §§ 2 and 9.

2. A true and correct copy of the Complaint and all records and proceedings filed before the Superior Court are attached hereto as Exhibit A.

TIMELINESS OF THIS NOTICE

3. On April 15, 2005 defendant Federal received a copy of the initial pleading in the State Court Action setting forth the causes of action upon which the suit is based. Defendant Sklover received notice of the State Court Action upon service of the First Amended Complaint on April 21, 2005. Defendant American Express did not receive notice of the State Court Action until it was served with the First Amended Complaint on April 26, 2005. This Notice of Removal is therefore timely under 28 U.S.C. § 1446(b).

PARTIES

4. According to the Complaint, plaintiff is a citizen of the Commonwealth of Massachusetts, residing at 1 Shandon Road, Apartment 215, Dorchester, Massachusetts.

5. Defendant American Express is now, and was at the time of the filing of the Complaint and at all times intervening, a corporation organized and existing under the laws of the State of New York with its principal place of business in the State of New York.

6. Defendant Sklover is now, and was at the time of the filing of the Complaint and at all times intervening, a corporation organized and existing under the laws of the State of New York with its principal place of business in the State of New York.

7. Defendant Federal is now, and was at the time of the filing of the Complaint and at all times intervening, an insurance company organized and existing

under the laws of the State of Indiana with its principal place of business in the State of New Jersey.

JURISDICTION

Diversity of Citizenship

8. Complete diversity of citizenship exists within the meaning of 28 U.S.C. § 1332, as plaintiff is a citizen of the Commonwealth of Massachusetts and defendants are citizens of the States of New York and Indiana, respectively.

Jurisdictional Amount

9. The matter in controversy in this civil action exceeds the sum or value of \$75,000.00, exclusive of interest and costs, within the meaning of 28 U.S.C. § 1332.

REMOVAL PROCEDURES

10. This action is now removable pursuant to 28 U.S.C. § 1441(a). This Notice of Removal is being timely filed.

11. This Notice of Removal is being filed within thirty (30) days of the defendants' receipt of the initial pleading setting forth the claim for relief upon which this action is based.

12. The United States District Court for the District of Massachusetts embraces the place where the State Court Action is currently pending.

13. Written notice of the filing of this Notice of Removal will be given to plaintiff, and a copy of this Notice will be filed in the appropriate state court, as required by 28 U.S.C. § 1446(d).

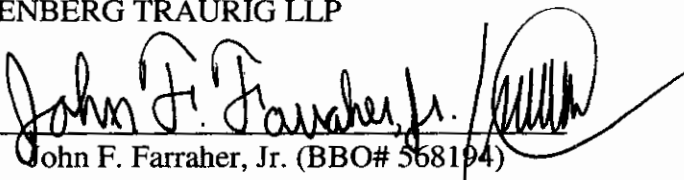
14. By filing this Notice of Removal, defendants do not waive any defense that may be available to any of them, including, but not limited to, the right to challenge personal jurisdiction, the validity of service of process or the selection of a U.S. forum (state or federal), and do not concede that the allegations in the Complaint state a valid claim under applicable law.

15. Pursuant to Local Rule 81.1(a), defendants shall request from the clerk of the Suffolk County Superior Court certified or attested copies of all records and proceedings in the state court, and certified or attested copies of all docket entries therein, including a copy of this Notice of Removal, and will file the same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, defendants American Express, Sklover and Federal respectfully request that the above-captioned action now proceeding against them in the Trial Court of the Commonwealth of Massachusetts, be removed therefrom and proceed in this Court as an action duly removed.

Dated: Boston, Massachusetts
May 13, 2005

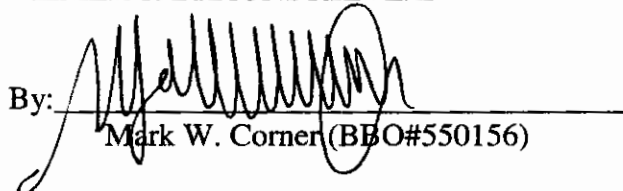
GREENBERG TRAURIG LLP

By: 
John F. Farraher, Jr. (BBO# 568194)

One International Place, 20th Floor
Boston, Massachusetts 02110
(617) 310-6029

*Attorneys for Defendant American Express
Company, Inc.*

RIEMER & BRAUNSTEIN LLP

By: 
Mark W. Corner (BBO#550156)

Three Center Plaza
Boston, Massachusetts 02108
(617) 523-9000

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

H. Christopher Boehning
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

*Attorneys for Defendant Federal Insurance
Company*

CRAIG AND MACAULEY P.C.

By: Allison M. O'Neil
Allison M. O'Neil (BBO#641330)

Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210
(617) 367-9500

Attorneys for Defendant The Sklover Group, Inc.
891707.1

I, Mark W. Corner, hereby certify that a true copy of the
above document was served upon the attorney of record
for each other party by mail-hand on 5/13/05.

Mark W. Corner
Mark W. Corner

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Altagracia J. Peguero v. American Express Company

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☒A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Mark W. Corner, EsquireADDRESS Riemer & Braunstein LLP
3 Center Plaza, Boston, MA 02108TELEPHONE NO. (617) 523-9000

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Altagracia J. Peguero

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kevin Donius, Corcoran, FitzGerald & Hennessey
500 Granite Avenue, Milton, MA 02186

DEFENDANTS

American Express Company, the Sklover Group, Inc.,
and Federal Insurance Company

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

Attorneys (If Known)

Mark W. Corner, Riemer & Braunstein LLP
3 Center Plaza, Boston, MA 02108
(for Federal Insurance Co.)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§1332

Brief description of cause:

Breach of Insurance Contract/Misrepresentation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$1,500,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 5/13/05 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A

1

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS TRIAL COURT

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT
CIVIL ACTION NO. 05-11900

ALTAGRACIA J. PEGUERO,)
Plaintiff,)
v.)
AMERICAN EXPRESS COMPANY,)
INC., THE SKLOVER GROUP, INC.)
and FEDERAL INSURANCE)
COMPANY,)
Defendants.)

COMPLAINT AND
JURY DEMAND

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
JUL 12 2005
RECEIVED
CLERK/MASTERS

I. PARTIES

1. The Plaintiff, Altagracia J. Peguero, is an individual who at all times material hereto has resided at 1 Shandon Road, Apartment 215, Dorchester, Massachusetts.
2. The Defendant, American Express Company ("American Express"), is a corporation duly organized and existing under the laws of the State of New York, which has at all times material hereto maintained its principal place of business at 200 Vesey Street, New York, New York. At all times material hereto, American Express has conducted business in the Commonwealth of Massachusetts.

3. The Defendant, The Sklover Group, Inc. ("Sklover"), is a corporation duly organized and existing under the laws of the State of New York, which has at all times material hereto maintained its principal place of business at 400 Post Avenue, Suite 103, Westbury, New York. At all times material hereto, The Sklover Group has conducted business in the Commonwealth of Massachusetts.
4. The Defendant, Federal Insurance Company ("Federal Insurance"), is a corporation duly organized and existing, upon information and belief, under the laws of the State of New Jersey, which has at all times material hereto maintained its principal place of business at 15 Mountain View Road, Warren, New Jersey. At all times material hereto, Federal Insurance Company has conducted business in the Commonwealth of Massachusetts.

GENERAL FACTUAL ALLEGATIONS

5. American Express, Sklover and Federal Insurance (collectively, "the Defendants") devised a scheme pursuant to which American Express and Sklover would market a so-called Accident Disability Policy (the "Policy"), underwritten by Federal Insurance, to

American Express customers. Upon information and belief, Sklover as an insurance broker arranged this joint undertaking.

6. The Policy, arranged by Sklover, marketed by the Defendants, and underwritten by Federal Insurance, provides coverage, as interpreted by the Defendants, so minimal as to be illusory and unconscionable.
7. As part of the scheme devised by the Defendants, the Policy was to be advertised and marketed in a manner intended to deceive customers regarding the coverage provided.
8. In or around August 2002, the Plaintiff received solicitations and promotional materials by mail from American Express regarding the Policy.
9. The solicitations and promotional materials the Plaintiff received contained misrepresentations and were misleading, unfair, and deceptive in that they falsely led the Plaintiff to believe she would be entitled to a payment of \$1.5 Million dollars if she were to become disabled.
10. The solicitations and promotional materials were false, misleading, unfair and deceptive, in violation

of M.G.L. c.93A and M.G.L. c.175, §110E, because,
among other things they:

- a) utilized a misleading policy name;
- b) emphasized in oversized, bold letters "Financial Security" and stated "You're covered with up to \$1.5 Million if an accident leaves you permanently disabled";
- c) stated, without qualification or further definition, that "This plan will pay you a \$1.5 Million lump sum benefit in the event a catastrophic accident leaves you totally and permanently disabled, and unable to work";
- d) minimized and obscured exceptions, reductions, and the limitations of the policy by listing them in small print on the back of the solicitation;
- e) failed to provide a conspicuous, unambiguous definition of disability; and
- f) promoted for sale an unconscionable insurance policy with illusory coverage of no real economic value.

- 11. In reliance upon the false, misleading, unfair and deceptive representations contained in the solicitations and promotional materials, the Plaintiff purchased the Policy and paid the premiums therefor.
- 12. The Plaintiff was never provided a plan summary or the Accident Disability Policy by the Defendants.

13. On December 25, 2002, the Plaintiff became permanently and totally disabled when her right dominant arm was amputated in a motor vehicle rollover accident.
14. Following her accident, the Plaintiff applied to Federal Insurance for the total disability benefits payable under the Policy.
15. In response to her application, Federal Insurance informed the Plaintiff that she was entitled to \$500.00 under the Policy and that under the Policy she would not be deemed "permanently and totally disabled" unless she had lost the use of one hand and one foot, both hands, sight in both eyes, hearing in both ears, or the ability to speak.
16. Had the Plaintiff been aware of this definition of total and permanent disability, she would not have purchased the Policy.
17. On June 8, 2004, the Plaintiff's attorney served the Defendants by certified mail with a Demand for Relief Pursuant to Massachusetts General Laws Chapter 93A, §§2 and 9, (the "First Demand Letter"). A copy of the First Demand Letter dated June 8, 2004 is attached as Exhibit A.

18. American Express made no written offer of settlement in response to the First Demand Letter.
19. Sklover made no written offer of settlement in response to the First Demand Letter.
20. Plaintiff's attorney granted Federal Insurance an extension to respond to the First Demand Letter until August 4, 2004.
21. On August 4, 2004, Federal Insurance responded to the First Demand Letter, which response contained no offer of settlement. A copy of Federal Insurance's August 4, 2004 response letter is attached as Exhibit B.
22. On November 10, 2004, the Plaintiff's attorney served American Express by certified mail with a Second Demand for Relief Pursuant to Massachusetts General Laws Chapter 93A §§2 and 9 (the "Second Demand Letter") by certified mail. A copy of the Second Demand Letter is attached as Exhibit C.
23. American Express made no written offer of settlement in response to the Second Demand Letter.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(Against American Express, Federal Insurance
and Sklover for Fraud/Deceit)**

24. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in Paragraphs one through twenty-three above.
25. The Defendants knowingly misrepresented the provisions of the Policy to the Plaintiff by, among other things, sending her solicitations and promotional materials that:
- a) utilized a misleading policy name;
 - b) emphasized in oversized, bold letters "Financial Security" and stated "You're covered with up to \$1.5 Million if an accident leaves you permanently disabled";
 - c) stated, without qualification or further definition, that "This plan will pay you a \$1.5 Million lump sum benefit in the event a catastrophic accident leaves you totally and permanently disabled, and unable to work";
 - d) minimized and obscured exceptions, reductions, and the limitations of the policy by listing them in small print on the back of the solicitation;
 - e) failed to provide a conspicuous, unambiguous definition of disability; and
 - f) promoted for sale an unconscionable insurance policy with illusory coverage of no real economic value.

26. The Defendants knowingly misrepresented the provision of the Policy to the Plaintiff for the purpose of inducing her to purchase it.
27. In reasonable reliance upon the Defendants' misrepresentations of the Policy provisions, the Plaintiff purchased the Policy.
28. As a direct and proximate result of her reliance upon the Defendants' misrepresentations, the Plaintiff did not purchase other disability insurance which would have provided benefits to her when she became disabled by the loss of her arm.
29. As a direct and proximate result of her reliance upon the Defendants' misrepresentations, the Plaintiff paid premiums for illusory insurance coverage.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus, costs, interest, and all other relief the Court deems just and appropriate.

SECOND CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Violation of M.G.L. c.175, §110E)

30. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraph one through twenty-three above.
31. By knowingly misrepresenting the provisions of the Policy as set forth above, and by minimizing, obscuring, and rendering ambiguous the definitions of disability and the amounts payable under the Policy in its advertisements, the Defendants violated M.G.L. c.175, §110E, and the regulations promulgated thereunder.
32. As a consequence of the Defendants' breach of M.G.L. c.175, §110E, pursuant to that statute, the Plaintiff is entitled to \$1.5 Million, the amount she reasonably anticipated she would have recovered had she not been deceived, plus reasonable costs and attorney fees.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus costs, interest, attorney fees and all other relief the Court deems just and appropriate.

THIRD CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Violation of M.G.L. c.93A, §§2 and 9)

33. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraph one through twenty-three above.
34. By knowingly misrepresenting the Policy provisions as set forth above and by minimizing, obscuring, and rendering ambiguous the definition of disability and the amounts payable under the Policy, the Defendants falsely, deceptively, and unfairly advertised the Policy in violation of M.G.L. c.93A, §§ 2 and 9, and the regulations promulgated thereunder.
35. As set forth above, in Paragraphs 17 through 23, the Defendants were served with proper and legally sufficient demands for relief under M.G.L. c.93A.
36. The Defendants failed to make timely, reasonable, written offers of settlement in response to the demands for relief.
37. By virtue of the Defendants' breach of M.G.L. c.93A, §§2 and 9, the Plaintiff is entitled compensatory damages, treble damages, attorney fees, costs, interest, and such other relief as the Court deems just and appropriate.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express

Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus costs, interest, treble damages, attorney fees and all other relief the Court deems just and appropriate.

FOURTH CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Breach of Contract)

38. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraphs one through twenty-three above.
39. Pursuant to the contract for insurance entered into between American Express, Federal Insurance, Sklover, and the Plaintiff, the Plaintiff was entitled to a payment of a \$1.5 Million lump sum if she became permanently and totally disabled.
40. The Plaintiff became disabled on or about December 25, 2002.
41. The Defendants breached the contract between them and the Plaintiff by refusing to pay her the \$1.5 Million lump sum benefit after she became disabled.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial,

plus, costs, interest, attorney fees, and all other relief the Court deems just and appropriate.

FIFTH CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Promissory Estoppel)

42. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraphs one through twenty-three above.
43. The Defendants knowingly misrepresented the Policy provisions as set forth above.
44. In reasonable reliance upon the Defendants' representations, the Plaintiff purchased the Policy and was led to believe she would be entitled to \$1.5 Million under the Policy if she became disabled.
45. In reasonable reliance upon her belief that she had purchased insurance which would cover her if she were to become disabled, the Plaintiff did not purchase other disability insurance.
46. The Plaintiff became disabled on or about December 25, 2002.
47. Having induced the Plaintiff to purchase the Policy with their misrepresentations, the Defendants are estopped from denying that the Plaintiff was entitled

to \$1.5 Million under the Policy when she became disabled.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus, costs, interest, attorney fees, and all other relief the Court deems just and appropriate.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
THE PLAINTIFF,
By his Attorney:



Kevin Donius, Esquire
Corcoran, FitzGerald
& Hennessy
500 Granite Avenue
Milton, MA 02186
TEL (617) 696-5700
FAX (617) 696-6704
BDO#: 551298

Date: March 24, 2005

3. The Defendant, The Sklover Group, Inc. ("Sklover"), is a corporation duly organized and existing under the laws of the State of New York, which has at all times material hereto maintained its principal place of business at 400 Post Avenue, Suite 103, Westbury, New York. At all times material hereto, The Sklover Group has conducted business in the Commonwealth of Massachusetts.
4. The Defendant, Federal Insurance Company ("Federal Insurance"), is a corporation duly organized and existing, upon information and belief, under the laws of the State of New Jersey, which has at all times material hereto maintained its principal place of business at 15 Mountain View Road, Warren, New Jersey. At all times material hereto, Federal Insurance Company has conducted business in the Commonwealth of Massachusetts.

GENERAL FACTUAL ALLEGATIONS

5. American Express, Sklover and Federal Insurance (collectively, "the Defendants") devised a scheme pursuant to which American Express and Sklover would market a so-called Accident Disability Policy (the "Policy"), underwritten by Federal Insurance, to

American Express customers. Upon information and belief, Sklover as an insurance broker arranged this joint undertaking.

6. The Policy, arranged by Sklover, marketed by the Defendants, and underwritten by Federal Insurance, provides coverage, as interpreted by the Defendants, so minimal as to be illusory and unconscionable.
7. As part of the scheme devised by the Defendants, the Policy was to be advertised and marketed in a manner intended to deceive customers regarding the coverage provided.
8. In or around August 2002, the Plaintiff received solicitations and promotional materials by mail from American Express regarding the Policy.
9. The solicitations and promotional materials the Plaintiff received contained misrepresentations and were misleading, unfair, and deceptive in that they falsely led the Plaintiff to believe she would be entitled to a payment of \$1.5 Million dollars if she were to become disabled.
10. The solicitations and promotional materials were false, misleading, unfair and deceptive, in violation

of M.G.L. c.93A and M.G.L. c.175, §110E, because,
among other things they:

- a) utilized a misleading policy name;
 - b) emphasized in oversized, bold letters "Financial Security" and stated "You're covered with up to \$1.5 Million if an accident leaves you permanently disabled";
 - c) stated, without qualification or further definition, that "This plan will pay you a \$1.5 Million lump sum benefit in the event a catastrophic accident leaves you totally and permanently disabled, and unable to work";
 - d) minimized and obscured exceptions, reductions, and the limitations of the policy by listing them in small print on the back of the solicitation;
 - e) failed to provide a conspicuous, unambiguous definition of disability; and
 - f) promoted for sale an unconscionable insurance policy with illusory coverage of no real economic value.
11. In reliance upon the false, misleading, unfair and deceptive representations contained in the solicitations and promotional materials, the Plaintiff purchased the Policy and paid the premiums therefor.
12. The Plaintiff was never provided a plan summary or the Accident Disability Policy by the Defendants.

13. On December 25, 2002, the Plaintiff became permanently and totally disabled when her right dominant arm was amputated in a motor vehicle rollover accident.
14. Following her accident, the Plaintiff applied to Federal Insurance for the total disability benefits payable under the Policy.
15. In response to her application, Federal Insurance informed the Plaintiff that she was entitled to \$500.00 under the Policy and that under the Policy she would not be deemed "permanently and totally disabled" unless she had lost the use of one hand and one foot, both hands, sight in both eyes, hearing in both ears, or the ability to speak.
16. Had the Plaintiff been aware of this definition of total and permanent disability, she would not have purchased the Policy.
17. On June 8, 2004, the Plaintiff's attorney served the Defendants by certified mail with a Demand for Relief Pursuant to Massachusetts General Laws Chapter 93A, §§2 and 9, (the "First Demand Letter"). A copy of the First Demand Letter dated June 8, 2004 is attached as Exhibit A.

18. American Express made no written offer of settlement in response to the First Demand Letter.
19. Sklover made no written offer of settlement in response to the First Demand Letter.
20. Plaintiff's attorney granted Federal Insurance an extension to respond to the First Demand Letter until August 4, 2004.
21. On August 4, 2004, Federal Insurance responded to the First Demand Letter, which response contained no offer of settlement. A copy of Federal Insurance's August 4, 2004 response letter is attached as Exhibit B.
22. On November 10, 2004, the Plaintiff's attorney served American Express by certified mail with a Second Demand for Relief Pursuant to Massachusetts General Laws Chapter 93A §§2 and 9 (the "Second Demand Letter") by certified mail. A copy of the Second Demand Letter is attached as Exhibit C.
23. American Express made no written offer of settlement in response to the Second Demand Letter.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Against American Express, Federal Insurance
and Sklover for Fraud/Deceit)

24. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in Paragraphs one through twenty-three above.
25. The Defendants knowingly misrepresented the provisions of the Policy to the Plaintiff by, among other things, sending her solicitations and promotional materials that:
- a) utilized a misleading policy name;
 - b) emphasized in oversized, bold letters "Financial Security" and stated "You're covered with up to \$1.5 Million if an accident leaves you permanently disabled";
 - c) stated, without qualification or further definition, that "This plan will pay you a \$1.5 Million lump sum benefit in the event a catastrophic accident leaves you totally and permanently disabled, and unable to work";
 - d) minimized and obscured exceptions, reductions, and the limitations of the policy by listing them in small print on the back of the solicitation;
 - e) failed to provide a conspicuous, unambiguous definition of disability; and
 - f) promoted for sale an unconscionable insurance policy with illusory coverage of no real economic value.

26. The Defendants knowingly misrepresented the provision of the Policy to the Plaintiff for the purpose of inducing her to purchase it.
27. In reasonable reliance upon the Defendants' misrepresentations of the Policy provisions, the Plaintiff purchased the Policy.
28. As a direct and proximate result of her reliance upon the Defendants' misrepresentations, the Plaintiff did not purchase other disability insurance which would have provided benefits to her when she became disabled by the loss of her arm.
29. As a direct and proximate result of her reliance upon the Defendants' misrepresentations, the Plaintiff paid premiums for illusory insurance coverage.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus, costs, interest, and all other relief the Court deems just and appropriate.

SECOND CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Violation of M.G.L. c.175, §110E)

30. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraph one through twenty-three above.
31. By knowingly misrepresenting the provisions of the Policy as set forth above, and by minimizing, obscuring, and rendering ambiguous the definitions of disability and the amounts payable under the Policy in its advertisements, the Defendants violated M.G.L. c.175, §110E, and the regulations promulgated thereunder.
32. As a consequence of the Defendants' breach of M.G.L. c.175, §110E, pursuant to that statute, the Plaintiff is entitled to \$1.5 Million, the amount she reasonably anticipated she would have recovered had she not been deceived, plus reasonable costs and attorney fees.
- WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus costs, interest, attorney fees and all other relief the Court deems just and appropriate.

THIRD CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Violation of M.G.L. c.93A, §§2 and 9)

33. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraph one through twenty-three above.
34. By knowingly misrepresenting the Policy provisions as set forth above and by minimizing, obscuring, and rendering ambiguous the definition of disability and the amounts payable under the Policy, the Defendants falsely, deceptively, and unfairly advertised the Policy in violation of M.G.L. c.93A, §§ 2 and 9, and the regulations promulgated thereunder.
35. As set forth above, in Paragraphs 17 through 23, the Defendants were served with proper and legally sufficient demands for relief under M.G.L. c.93A.
36. The Defendants failed to make timely, reasonable, written offers of settlement in response to the demands for relief.
37. By virtue of the Defendants' breach of M.G.L. c.93A, §§2 and 9, the Plaintiff is entitled compensatory damages, treble damages, attorney fees, costs, interest, and such other relief as the Court deems just and appropriate.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express

Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus costs, interest, treble damages, attorney fees and all other relief the Court deems just and appropriate.

FOURTH CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Breach of Contract)

38. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraphs one through twenty-three above.
39. Pursuant to the contract for insurance entered into between American Express, Federal Insurance, Sklover, and the Plaintiff, the Plaintiff was entitled to a payment of a \$1.5 Million lump sum if she became permanently and totally disabled.
40. The Plaintiff became disabled on or about December 25, 2002.
41. The Defendants breached the contract between them and the Plaintiff by refusing to pay her the \$1.5 Million lump sum benefit after she became disabled.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial,

plus, costs, interest, attorney fees, and all other relief the Court deems just and appropriate.

FIFTH CAUSE OF ACTION

(Against American Express, Federal Insurance and Sklover
For Promissory Estoppel)

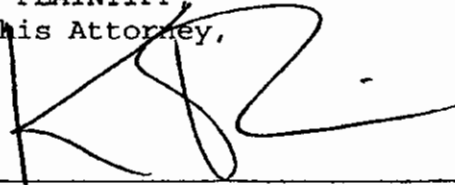
42. The Plaintiff re-alleges and incorporates herein by reference the factual allegations contained in paragraphs one through twenty-three above.
43. The Defendants knowingly misrepresented the Policy provisions as set forth above.
44. In reasonable reliance upon the Defendants' representations, the Plaintiff purchased the Policy and was led to believe she would be entitled to \$1.5 Million under the Policy if she became disabled.
45. In reasonable reliance upon her belief that she had purchased insurance which would cover her if she were to become disabled, the Plaintiff did not purchase other disability insurance.
46. The Plaintiff became disabled on or about December 25, 2002.
47. Having induced the Plaintiff to purchase the Policy with their misrepresentations, the Defendants are estopped from denying that the Plaintiff was entitled

to \$1.5 Million under the Policy when she became disabled.

WHEREFORE, the Plaintiff, Altagracia J. Peguero, demands judgment against the Defendants, American Express Company, Federal Insurance Company, and The Sklover Group, Inc. in an amount to be determined by a jury at trial, plus, costs, interest, attorney fees, and all other relief the Court deems just and appropriate.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
THE PLAINTIFF,
By his Attorney,

A handwritten signature in black ink, appearing to be 'K. Donius', written over a horizontal line.

Kevin Donius, Esquire
Corcoran, FitzGerald
& Hennessy
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Date: April 15, 2005